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OFFICE OF GENERAL
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October 19, 2009

VIA MESSENGER

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Subject: MUR 6215

Dear Sir:

Please find enclosed an original and three copies of the Response, including Affidavit, of Daniel A. Knott to the Complaint in the above-noted matter. Please return an endorsed filed copy of the same.

Sincerely yours,

Robert P. Charrow
Counsel to Daniel A. Knott

Enclosures

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AUSTIN
BOSTON
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DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
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ORANGE COUNTY
ORLANDO
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BEFORE THE FEDERAL ELECTION COMMISSION

Randy L. Spitzmesser,

Complainant,

v.

Windom Kimsey, *et al.*

Respondents.

MUR 6215

Response of
Daniel A. Knott

Introduction

This response is submitted by Respondent Daniel A. Knott to a Complaint filed with the Federal Election Commission ("FEC" or "Commission") on September 28, 2009 by Randy L. Spitzmesser.¹

This Complaint is surprising: it does not allege that Mr. Knott ("Knott") in any way violated the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. § 431 *et seq.*, nor does it present a single fact or any other evidence that would support even an inference that Knott violated FECA. Indeed, the complainant apparently recognized that there were no facts implicating Knott in anyway: Knott is not even a named respondent in the Complaint.² Inasmuch as

¹ The Complaint was dated September 25, 2009, was filed with the Commission on September 28, 2009, and was received by Respondent on October 5, 2009. While the Commission's letter transmitting the Complaint to Mr. Knott listed his business address and hence listed his employer, Mr. Knott's counsel was advised during an October 13, 2009 conversation with the Commission's Ms. Kim Collins that PBS&J, Mr. Knott's employer, was not a respondent in this matter. Therefore, this response is submitted solely on behalf of Mr. Knott.

² The regulations implementing the FECA require that a complaint "clearly identify as a respondent each person or entity who is alleged to have

there are no "facts [alleged] which describe a violation of [FECA]" by Knott, the Commission should find no reason to believe that Knott violated the FECA. 11 C.F.R. § 111.4(d)(3) (Complaint "should contain a clear and concise recitation of the facts which describe a violation of [FECA or its implementing regulations].").

Statement of the Case

On September 28, 2009, Randy L. Spitzmesser filed a complaint with this Commission in which he alleged that various principals of Tate Snyder Kimsey, an architectural firm, violated FECA. Spitzmesser, a former owner or employee of Tate Snyder Kimsey, alleges that he was forced out of the business owing to "numerous disagreements as I exercised professional skepticism about my partner's activities." Complaint at 1. Spitzmesser goes on to allege that one of the partners, Windom Kimsey, was organizing a fundraiser for Senate Majority Leader Harry Reid (NV) and that Kimsey "made it very clear to me that 'anyone who did not make a contribution will not have any work for the upcoming year.'" *Id.* The complainant then alleges that since he did not have \$1,000 in his checking account, "[Tate Snyder Kimsey] forwarded me the money through the disguise of my periodic expense reimbursement." *Id.*

committed a violation." 11 C.F.R. § 111.4(d)(1). Here, the complainant himself recognized that there is no evidence indicating the Knott had violated FECA and thus, chose not to name Knott as a respondent. Since Knott has not been named a respondent, the Complaint as to Knott, should be dismissed.

Respondent Daniel A. Knott is an engineer employed by PBS&J in its Las Vegas office; PBS&J and its parent, The PBSJ Corporation, are headquartered in Tampa, Florida. *See* Affidavit of Daniel A. Knott ("Knott Affid.") ¶ 1. The only allegation that even mentioned Knott was a statement in the Complaint to the effect that "[Tate Snyder Kimsey] also possibly used the same coercive threat of 'anyone who did not make a contribution will not have work for the upcoming year' with the following consultants" including "Dan Knott, PBS&J (civil engineer)." Complaint at 2 (emphasis supplied). This is the only mention of Daniel Knott in the Complaint.

ARGUMENT

Knott Did Not Violate the FECA and the Complaint Does Not Allege Otherwise

The entire Complaint against Knott is premised on a series of factual inferences, possibilities and inaccuracies, including that Knott was "possibly" pressured into making a campaign contribution to Senator Harry Reid, and inferentially that Knott made a contribution to Reid. Not only is neither factual inference true, but complaint does not even allege that Knott did anything wrong. The absence of allegations of wrongdoing is understandable since Knott did nothing amiss.

First, according to the attached affidavit of Daniel A. Knott, no one from Tate Snyder Kimsey pressured him into making any campaign contribution. *See* Knott Affid. ¶ 7. Second, Knott never made a campaign contribution to Reid. *See id.*

Specifically, in early February 2009, Knott received an email from Tate

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Snyder Kimsey with an invitation to attend a fundraising luncheon honoring Senator Harry Reid. *See id.* at ¶ 2. A copy of an invitation for that event was attached as an exhibit to the Complaint. Those who would be attending were asked to contribute \$1,000, *i.e.*, "\$1,000 suggested minimum contribution." *Id.* at ¶ 3. Rather than contributing, Knott forwarded the invitation to his supervisor at PBS&J and then to a Division Manager who in turn forwarded it to PBS&J headquarters in Tampa, Florida. *See id.* at ¶ 4. The PBSJ Corporation PAC had contributed to Senator Reid in the past. *Id.* A few days later, Knott was advised that The PBSJ Corporation PAC would be making a \$2,500 contribution to Senator Reid's re-election effort, the amount recommended by the Division Manager, and the PAC mailed the contribution directly to Reid's campaign address. *See id.* at ¶ 5. Given The PBSJ Corporation PAC's promised contribution, Knott attended the fundraising luncheon on February 17, 2009. *See id.*

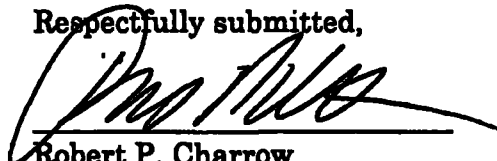
No one at Tate Snyder Kimsey coerced Knott into making a contribution or recommending that his employer's PAC make a contribution. Specifically, "[a]t no time did anyone associated with Tate Snyder Kimsey or the Reid campaign coerce [Knott]" or "anyone at PBS&J or PBSJ PAC into contributing to Senator Reid." *Id.* at ¶ 7. Knott made no contribution to Senator Reid. *Id.* The ultimate decision to make the PBSJ PAC contribution was made by individuals in Tampa, Florida, far removed from Nevada. *See id.* at ¶ 5.

The Complaint contains no evidence to the contrary; in fact, the Complaint sets out no evidence whatsoever with respect to Mr. Knott. The Complaint contains

as attachments three pages from Friends of Harry Reid's FEC First Quarter 2009 Filing, Schedule A. In handwritten annotations, the complainant accuses three listed contributors (Maizie Pusich at p. 251, Dwayne Miller at p. 228, and William Snyder at p. 45) of some form of impropriety. Mr. Knott is not mentioned.

The sole issue before this Commission is whether there is any evidence whatsoever to support a "reason to believe" finding that Daniel A. Knott somehow violated FECA.³ The complainant's belief that something is "possible" does not translate into "reason to believe;" a mere possibility, absent evidence, can form no reasonable basis to believe anything. The Complaint contains no evidence whatsoever of any violation by Mr. Knott, and therefore, the Commission should find that there is no reason to believe that Daniel A. Knott violated any provision of FECA.

Respectfully submitted,



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³ Since there is no evidence that Mr. Knott was coerced into making a contribution which he never made, this response does not address whether the allegations against Knott, even if viewed as true, could constitute a violation of FECA. Knott does not waive his right to address this issue should the need arise.